

No. 13-1429 RV

<sup>1</sup> 1 CSR 15-3.446(6).

other evidence admissible under the law.<sup>2</sup> We make the following findings of fact based on the pleadings and the affidavit accompanying the Director's motion.

### **Findings of Fact**

1. On May 25, 2013, Voelkel purchased the Cadillac for \$45,730.
2. On June 3, 2013, Voelkel sold a 2005 Chevrolet motor vehicle ("the Chevrolet") for \$5,750.
3. On June 20, 2013, Voelkel sold a 2006 Saturn motor vehicle ("the Saturn") for \$1,800.
4. On June 25, 2013, Voelkel applied for a Missouri title and vehicle registration for the Cadillac. Voelkel received a rebate credit of \$1,250 and a credit of \$5,750 from the sale of the Chevrolet against the purchase price of the Cadillac, resulting in a net purchase price of \$38,750 for the Cadillac. Voelkel paid \$1,636.34 in state sales tax and \$1,239.36 in local sales tax.
5. On July 2, 2013, based on the sales price of the Saturn, Voelkel filed a motor vehicle refund request with the Director for a partial refund of the state and local sales tax he paid on the Cadillac.
6. On July 31, 2013, the Director issued a final decision denying the refund claim.

### **Conclusions of Law**

This Commission has jurisdiction over appeals from the Director's final decisions.<sup>3</sup> Our duty in a tax case is not merely to review the Director's decision, but to find the facts and determine, by the application of existing law to those facts, the taxpayer's lawful tax liability for the period or transaction at issue.<sup>4</sup> Section 144.025.1<sup>5</sup> provides:

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<sup>2</sup> 1 CSR 15-3.446(6).

<sup>3</sup>Section 621.050.1, RSMo 2000.

<sup>4</sup> *J.C. Nichols Co. v. Director of Revenue*, 796 S.W.2d 16, 20-21 (Mo. 1990).

<sup>5</sup>RSMo Supp. 2012.

[W]here any article on which sales or use tax has been paid, credited, or otherwise satisfied or which was exempted or excluded from sales or use tax is taken in trade as a credit or part payment on the purchase price of the article being sold, the tax imposed by sections 144.020 and 144.440 shall be computed only on that portion of the purchase price which exceeds the actual allowance made for the article traded in or exchanged, if there is a bill of sale or other record showing the actual allowance made for the article traded in or exchanged . . . . This section shall also apply to motor vehicles, trailers, boats, and outboard motors sold by the owner or holder of the properly assigned certificate of ownership if the seller purchases or contracts to purchase a subsequent motor vehicle, trailer, boat, or outboard motor within one hundred eighty days before or after the date of the sale of the **original article**[.]

(Emphasis added).

Voelkel argues that he should be allowed credit for the subsequent sale of the Saturn. Tax credits and exemptions from taxation are construed strictly against the taxpayer, and any doubt or ambiguity is resolved against the taxpayer.<sup>6</sup> The statute applies if the owner purchases or contracts to purchase a subsequent motor vehicle, trailer, boat, or outboard motor within 180 days before or after the date of sale of “the original article.” The reference to “the original article” indicates that there can be only one.<sup>7</sup> We must apply the law as written,<sup>8</sup> and we are not authorized to make exceptions.

Voelkel already received a credit for the sale of the Chevrolet. He is not entitled to any additional credit for the subsequent sale of the Saturn.

### Summary

Voelkel is not entitled to a refund of state sales tax and local tax.

SO ORDERED on October 1, 2013.

/s/ Sreenivasa Rao Dandamudi  
SREENIVASA RAO DANDAMUDI  
Commissioner

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<sup>6</sup>*Southwestern Bell Telephone Co. v. Director of Revenue*, 182 S.W.3d 226, 238 (Mo. 2005); *Hermann v. Director of Revenue*, 47 S.W.3d 362, 365 (Mo. 2001).

<sup>7</sup>MERRIAM-WEBSTER’S COLLEGIATE DICTIONARY 70, 875 (11<sup>th</sup> ed. 2004).

<sup>8</sup>*Lynn v. Director of Revenue*, 689 S.W.2d 45, 49 (Mo. 1985).